

FOREWORD

The advent of the Carter Administration brought about public discussion of human rights in a manner unprecedented since the period immediately following the creation of the United Nations. What is unique about the current dialogue is that it stems from the demonstrated willingness of the Administration and Congress to lend the instruments of foreign policy to the international effort to enhance and secure human rights—at times to the detriment of well-established relations based on common global or hemispheric security interests.

It might seem anomalous to find U.S. governmental institutions acting in concert with groups seeking to secure human rights throughout the world if the current human rights priority was not based on the articulated goal of conforming U.S. foreign policy to domestic principles. Historically, this field of activity has been restricted to nongovernmental organizations, the human rights institutions of the European community, and the organs of the United Nations. The role of human rights advocate is an unlikely one for any government since governments are constantly subject to internal pressure urging them to diminish restraints against the violation of domestic civil rights; with respect to foreign states, human rights concerns have been subordinated to economic, strategic and geopolitical interests. Whether the United States will be able to adhere, in formulating its foreign policy, to the high priority given human rights is doubtful in the wake of escalating international tension;¹ in any event, it is likely that the states to whom U.S. objections are directed will be increasingly less disposed to accord human rights the somewhat elevated respect that United States action and heightened international attention has recently secured. Trends which will create an unfavorable climate for the enhancement of human rights include the rising rate of population growth, the increasing sophistication of surveillance technology, political reaction to terrorist activities, and rising barriers to international migration.²

Human rights concerns prompted members of the Duke International Law Society to sponsor a symposium in the spring of 1978 focusing on the

1. Evidence of at least a limited retreat from the policies of the early Carter Administration has begun to appear. Secretary of State Vance, testifying before the House Foreign Affairs Committee, stated that the United States had to confront Soviet threats in the third world and come to the assistance of nations whose human rights performance has not been "ideal." *New York Times*, Feb. 6, 1980, at A8, col. 3.

2. See J. DOMINGUEZ, R. FALK, N. RODLEY & B. WOOD, *ENHANCING GLOBAL HUMAN RIGHTS* 2-6. Richard Ullman, in a preface to the volume, notes that these trends are likely to be countered by an increase in the "ranks of persons, worldwide, who feel deep concern about violations of human rights. . . ." *Id.* at 4. Similarly, the revolution in communication allows persons in many societies to be aware of repressive measures taken by other regimes. *Id.*

newly-launched Carter administration policy and its impact on the right to dissent at home and abroad. This issue is composed of papers presented at that symposium as well as several provided by authors who did not participate. The symposium demanded time-consuming work from all of the members of the International Law Society but its success was assured by the organizational skills and untiring efforts of two 1979 graduates of Duke law school: Claudia Carver, Chairperson of the Symposium Committee and now an attorney in Los Angeles and Gray McCalley, now an attorney in Atlanta. Generous and much-appreciated support from the Rockefeller Foundation made it possible to gather geographically diverse participants.

In the first article, Mark Schneider, who served in the Department of State as the Deputy Assistant Secretary for Human Rights and Humanitarian Affairs, discusses the changes in the State Department's structure that have resulted in human rights being accorded a higher priority in governmental decision making. Schneider notes that the Assistant Secretary for Human Rights and Humanitarian Affairs now enjoys full membership on inter-agency committees concerning security assistance and arms transfers; the Bureau in which he served has been able to establish as official policy a negative presumption against arms transfers to the internal security forces of countries found to be engaged in gross violations of human rights.

Allard Lowenstein similarly provides a view from within the Administration of the priority given to human rights. Lowenstein places great emphasis on the willingness to publicly address human rights violations in countries throughout the world and adopted the tactic—somewhat novel in convocations of diplomatic personnel—of departing from prepared addresses and speaking directly to issues of concern. He argues that the first step toward reaching the solution to problems as intractable as those in the area of human rights is simply to talk about their existence. His paper consists, in substantial part, of incidents that occurred during his tenure as U.S. Ambassador to the United Nations for Special Political Affairs and involved his willingness to freely discuss violations of human rights; significantly, he remains open to discussion of the United States' failure to secure the human rights of its own citizens.

Of necessity, the United Nations remains the central arena for attempts to secure global observance of human rights, despite its historic ineffectiveness in preventing the repressive practices of member nations. John Halderman suggests a specific method by which the machinery of the United Nations may be invoked to promote respect for human rights. He acknowledges the difficulty of compelling states to respect fundamental notions of human rights and advances the proposition that "human rights observances cannot be improved significantly by international action directed at the human rights problem per se." He suggests that the instruments of the United Nations be used to foster

a sense of worldwide community which would ultimately engender greater respect for human rights; this can be accomplished only if, over an extended period of time, all significant disputes between nations are brought before the United Nations.

Kazimierz Grzybowski discusses the penal regimes of the Soviet Union and the nations within the Soviet orbit. He notes that current Soviet dissidents differ from their predecessors in their acceptance of the basic organization and ideological foundation of the Soviet government; they even accept the Party's control, he asserts, and agitate only for the liberalization of these institutions. Yet he foresees scant prospects within the Soviet Union for liberalization of the right to dissent, in part because the courts which control disposal of political cases are not independent and demonstrate little understanding of the principles upon which political and civil rights are based, such as the presumption of innocence, the role of defense counsel, and fundamental notions of impartial and objective judicial decision making. While insensitivity to notions of due process indicates that dissidents in the Soviet Union are not likely to be accorded basic political rights, as these rights are understood in the open societies of the West, Grzybowski finds more favorable prospects for dissent in Soviet orbit countries such as Poland, where the general sympathy between intellectuals and the broad mass of workers offers some assurance, albeit "fragile and uncertain," that state authorities will respect fundamental rights.

Eugene Fryer, in his article, *Soviet Human Rights: Law and Politics in Perspective*, examines the methods through which moderation of Soviet practices may be pursued. He argues that human rights concerns should not be linked to other foreign policy interests such as Soviet imperialism and arms control; human rights may best be secured through nonconfrontational relations and the circulation of information in a manner which does "not raise the immediate specter of the sudden penetration today of permissiveness, or of the diminution of Party control over behavior or ideas." Fryer, somewhat like Halderman, contends that human rights will not be advanced through measures which directly address the issue but will be secured only as an ultimate and indirect result of international relations.

Elizabeth Turner, currently Coordinator of the Freedom-to-Write Committee of the American P.E.N. Center, provides an interesting analysis of the role of the dissenting writer under repressive regions. She notes that although international human rights law seems to offer special protections to the creative writer, playwrights, poets and novelists are in reality subject to singular control. Turner calls attention to the symbiotic relationship between political reality and an author's work of art which frequently results in the politicization of the writer; the writer's opinion accordingly may be attributed special significance by both the reader and political officials. She concludes by

detailing the cases of individual writers who have been detained or tortured as a result of their creative activity.

Perhaps no domestic occurrence in recent history has aroused such deviousness as the events surrounding the intention of the American Nazi Party to demonstrate in the predominantly Jewish Chicago suburb of Skokie, Illinois. David Goldberger, an attorney for the American Civil Liberties Union, served as counsel for the Nazis in contesting an injunction against such demonstrations; his role in so doing subjected him to considerable abuse and apparently caused the resignation of approximately 25 percent of the members of the Illinois chapter of the ACLU. In his article, *The Right to Counsel in Political Cases: The Bar's Failure*, Goldberger appeals to the organized bar to render legal assistance in cases proving to be extremely unpopular. He characterizes the bar's history in such cases as a "long record of hostility or indifference," and suggests that the organized bar must adopt several courses of action including speaking out on behalf of lawyers who appear in extremely unpopular cases, financially supporting civil liberties organizations, and ceasing to avoid appearing in such cases as a matter of course.

Goldberger's position is countered in *Skokie, the ACLU and the Endurance of Democratic Theory*, by Victoria Curtis Bramson and Irving Horowitz. They argue that the Nazi activities were properly enjoined since symbols such as the swastika—which invokes the historical notion of mass genocide—should not be protected to the detriment of the privacy of the Skokie residents, many of whom survived Nazi concentration camps. They contend that the actions of the Nazi party members were designed solely to incite hostile reaction leading to violence and therefore fall outside the protections of the first amendment. The authors challenge not only the ACLU's representing the Nazi party, but also their specific advice, as "ideological laundering" designed to make the demonstrators appear divorced from their historical antecedents in fascist Germany.

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